

CILE International Seminar
***Wilāya* and Islamic Ethics**

Background Paper
Dr. Mohammad Fadel (University of Toronto)

20-23 February 2023

Research Center for Islamic Legislation and Ethics
Hamad bin Khalifa University
Doha, Qatar

1. Introduction

Sunnī jurists use the term *walī* and its various cognates – *wilāya*, *awliyā*, *mawlā*, *wālī*, *mutawallī*, etc. – ubiquitously in various chapters of positive law, but particularly in chapters dealing with public office. For example, another term for the caliph or ruler is *walī al-amr*, and the term for the successor of the ruler is *walī al-‘ahd*, both terms being contractions for the longer phrase *walī amr al-muslimīn* and *walī ‘ahd al-muslimīn*. The ubiquity of words derived from the root *wa-la-ya* to describe political officials in Sunnī law is conceptually significant insofar as other common words used to describe rulers – such as *malik* – even if they were frequently used in popular parlance, literary sources, or historical works, were never used by the jurists themselves to describe Muslim rulers.

The moral significance of the concept of *walī* for politics and rulership can be seen by comparing its meaning to the alternative term *malik*. The root *ma-la-ka*, for example, connotes domination and despotic power. In *Lisān al-‘Arab* Ibn Manzūr quotes Ibn Sīda as saying the following:

“*Al-malku wa’l-mulku wa’l-milku iḥitwā’ al-shay’i wa’l-qudra ‘alā al-istibdād bihi*
‘Malk’ and ‘mulk’ and ‘milk’ [all of them] mean encompassing something and the
unilateral power to determine it.”

(*Lisān al-‘Arab*, ed. ‘Abd Allāh ‘Alī al-Kabīr et al., 6: 4267 (Cairo: Dār al-Ma‘ārif, n.d.)

The root *wa-la-ya*, while it includes power, implies a purposive exercise of power. Ibn Manzūr quotes Ibn al-Athīr as saying:

“*Wa-ka’anna al-wilāya tush ‘ir bi’l-tadbīr wa’l-qudra wa’l-fi’l wa mā lam yajtami ‘ dhālika*
fihā lam yunṭaliq ‘alayhi ism al-wālī

It is as though ‘*al-wilāya*’ connotes planning, power and action, and if these are not present in it [i.e., the action], the word ‘*wālī*’ should not be used [to describe the actor].”

(*Lisān al-‘Arab*, 6:4920)

From an external perspective, the *malik* and the *wālī* or the *wālī* seem to overlap insofar as both exercise power over someone or something, with the decisive difference arising out of the relationship of the powerholder to the object of the power: the *malik* can act unilaterally toward it (*al-istibdād bihi*) while the *wālī* uses his power to act according to a plan that is *for* the benefit of object.

The affective relationship that exists between the *wālī* and the object of the *wālī*’s power is manifested in the idea of support (*nuṣra*) that is also associated with the root *wa-la-ya* and which is absent from the root *ma-la-ka*. Accordingly, the term *wālī* and its cognates (*wilāya*, *walāya*, *walā’*, *mawlā*, *muwālāt*) connote strong moral resonances in Arabic, insofar as these terms all convey closeness, friendship, care, and support, among other meanings. Not only does the Quran describe the believers, men and women, as the *awliyā’* of one another (*al-Tawba*, 9:71), it describes God as being the *wālī* of those who believe (*al-Baqara*, 2:257). Sufīs, Muslim mystics, appropriate the term *wilāya* to describe the special relationship between the devoted servant of God and God, calling those believed to be particularly close to God, *wālī*, see, e.g., Farīd al-Dīn al-‘Aṭṭār, *Tadhkirat al-Awliyā’* and Abū Nu‘aym al-Aṣḥbānī, *Ḥilyat al-Awliyā’*.

Al-Shāṭibī, in *Kitāb al-Maqāṣid* of *al-Muwāfīqāt*, subsumes the Sufī dimension of *wilāya* into the legal dimension of *wilāya* when he analogies the world-renunciation of certain Sufīs (whom

he calls *arbāb al-aḥwāl*) to the guardian entrusted to manage the property of the orphan (*wakīl māl al-yatīm*) or an official dividing property owned in common (*qassām*):

Fa-inna ṣāhibahu yarā tadbīr allāh lahu khayran min tadbīrihi li-nafsihi fa-idhā dabbara li-nafsihi inḥaṭṭa ‘an rutbatihī ilā mā huwa dūnahā wa hā’ulā’ hum arbāb al-aḥwāl wa minhum man ya ‘uddu nafsahu ka’l-wakīl ‘alā māl al-yatīm in istaghna ista ‘affa wa in iḥtāja akala bi’l-ma ‘rūf wa mā ‘adā dhālika ṣarafahu ka-mā yuṣraf māl al-yatīm fī manāfi ‘ihī fa-qad yakūn fī’l-ḥāl ghaniyyan ‘anhu fa-yunfiquhu ḥaythu yajib al-infāq wa yumiskuhu ḥaythu yajib al-imsāk wa in iḥtāja akhadha minhu miqdār kifāyatihī bi-ḥasab mā udhina lahu min ghayr isrāf wa lā iqtār wa hādhā ayḍan barā’a min al-ḥuḏūz fī dhālika al-iktisāb fa-innahu law akhadha bi-ḥaḏḏihī la-ḥabā nafsahu dūna ghayrihi wa huwa lam yaf‘ al bal ja ‘ala nafsahu ka-āḥād al-khalq fa-ka’annahu qassām fī al-khalq ya ‘uddu nafsahu wāḥidan minhum.

The world-renunciant believes that God’s plans for him are better than the plans he makes for himself, and that were he to plan for himself, it would degrade him, and place him in a station beneath that which [God assigns him]. These are the saints. Among them are those who deem themselves[, with respect to their own property,] to be in the position of the guardian of an orphan’s property: if they are not in need, they refrain from consuming [their own property], and if they are in need, they consume only in moderation. Whatever excess they have, they spend it as the property of an orphan is spent: for [the orphan’s] benefit. If in the circumstances they are not in need, they spend out of his property where it is required and prevent it from being spent where it should not. If they are in need, they take only what they need in accordance with what is permitted to them, spending neither excessively nor niggardly. That, too, amounts to a kind of repudiation of self-interest in that labor. Indeed, [from their point of view] if it had been the case that they took into account their own interests, they would have preferred themselves over others, but they refrain from so doing, and instead they deal with themselves as though they were simply one of God’s creatures. It is as though he partitions property among God’s creatures, treating himself as one of them. (al-Shāṭibī, ed. ‘Abd Allāh al-Darrāz, *al-Muwāfaqāt*, 2: 193 (Beirut: Dār al-Ma‘rifā, n.d.).

2. The Different Contexts of *Wilāya* in the Islamic Tradition

Wilāya is a significant theological, Sufi and legal term.

It is a theological term because God is described as the *walī* of the believers. At the same time, God is also described as *malik* and *mālik*.

It is a Sufi term because the relationship between the seeker and God is understood as a kind of *wilāya*. Not only is the relationship between the seeker and God one of *wilāya*, some saints according to important strands of Sufism exercise a kind of spiritual sovereignty – *wilāya* – over the world.

It is a legal term because the activity of governing is described using the term *wilāya*, as opposed to other possible terms, and the norms of *wilāya* inform jurists' understandings of the qualifications for public office, the ends which public officials should pursue, and the legal consequences of their decision-making. Mohammad Fadel has shown how ideas of *wilāya* and agency (*wikāla*) taken from relationships between private persons¹ were appropriated by Sunnī jurists to develop a framework for regulating the conduct of public officials, and determining the extent of their authority to make rules for the public.²

One principal goal of this Seminar is to increase our knowledge of how Muslims understood *wilāya* as a substantive ideal along these three different dimensions, whether the concept of *wilāya* served to bridge these different discursive traditions, for example, if there were shared understandings of *wilāya* despite the different concerns of these different discourses, or whether traditions of thinking about *wilāya*, by contrast, are incommensurate, with the use of a common term only coincidental. The recent works of Huseyin Yilmaz,³

¹ Mohammad Fadel, "Fiduciary Principles in Classical Islamic Law Systems," Oxford Handbooks (Oxford University Press, 2019), <https://doi.org/10.1093/oxfordhb/9780190634100.013.30>.

² Mohammad Fadel, "Islamic Law Reform: Between Reinterpretation and Democracy," *Yearbook of Islamic and Middle Eastern Law* 18, no. 1 (2017): 44–90, https://doi.org/10.1163/22112987_01801005.

³ Hüseyin Yılmaz, *Caliphate Redefined: The Mystical Turn in Ottoman Political Thought* (Princeton, New Jersey: Princeton University Press, 2018).

Waleed Ziad⁴ and A. Azfar Moin⁵ demonstrate the potential relevance of integrating these different discourses to understand better developments in Islamic political thought in later Islamic centuries.

Topics that might be explored in the context of this Seminar include, but are not limited to:

- *What is the meaning of the divine wilāya that God exercises toward the world, generally, and the believers in particular?*
- *What are the limits of this wilāya? Does it extend to non-believers? (cf. al-Baqara, 2:257 (implying that non-believers are not within God’s wilāya) Are there sectarian interpretations of wilāya in the Muslim tradition, e.g., is this relationship limited to some, not all Muslims? Are theological uses of wilāya related to the idea of the “saved sect (al-firqa al-nājiya)?*
- *What is the history of the idea of saintly wilāya, and what is the nature of the wilāya that saints exercise in this life? Is it limited to the spiritual domain or does it effect the temporal realm? Is there a potential for conflict between the temporal wilāya that public officials exercise and the wilāya that saints exercise?*
- *Can we find historical cases of jurists using the concepts associated with wilāya to reverse or resist effectively the arbitrary or unlawful decisions of public officials? What evidence is there, if any, of institutional mechanisms that might have operationalized the legal ideal that public officials must be accountable to the public and the individuals under their care as legal doctrine seemed to suggest?*
- *What do the different conceptions of wilāya in the Islamic tradition teach us about Islamic political theorizing? To the extent that there are different conceptions of wilāya in Islamic political thought, can we talk about different conceptions of “friendship” for the purposes of understanding Islamic political theorizing,*

⁴ Waleed Ziad, *Hidden Caliphate: Sufi Saints beyond the Oxus and Indus* (Cambridge, Massachusetts: Harvard University Press, 2021).

⁵ A. Azfar Moin, *The Millennial Sovereign: Sacred Kingship and Sainthood in Islam*, South Asia across the Disciplines (New York [N.Y: Columbia University Press, 2012).

analogous to different political ideas of friendship in the modern Western tradition, e.g., Carl Schmitt's conception of the political as fundamentally about the friend-enemy distinction,⁶ or John Rawls' idea of civic friendship as the telos of the political?⁷ Does the doctrine of the Imāmate in Shī'ism render wilāya superfluous or does it transform it in some way to distinctive to Shī'ism?

3. The Ethical Dimension of *Wilāya*

It is revealing that Shāṭibī sees something in common in the ethical disposition of the virtuous public official and the saint: both exercise their authority and power without regard to their self-interest, each possessing the capacity to view themselves in a detached fashion, “as though he were simply one of God’s creatures.” What the virtuous ruler and the saint share is the virtue of being other-regarding, *īthār*, i.e., the capacity to place the interests of others before themselves. This suggests that *wilāya* is also an ethical practice.

Some topics that would be of interest to the Seminar include:

- *What are the particular virtues that Muslim theorists have identified with wilāya?*
- *What kinds of practices did Muslims identify as crucial for cultivating the virtues associated with the ethic of wilāya?*

4. The Gendered Dimension of *Wilāya*

With a few notable exceptions, classical Muslim jurists largely excluded women from exercising the authority associated with *wilāya*.⁸ Gender-based restrictions on the exercise of *wilāya* were not, however, limited to public offices such as that of caliph or judge; women were also not

⁶ Carl Schmitt, *The Concept of the Political*, Expanded ed. (Chicago: University of Chicago Press, 2007).

⁷ John Rawls, *Justice as Fairness: A Restatement* (Cambridge, Mass: Harvard University Press, 2001), 126.

⁸ Mohammad Fadel, “Is Historicism a Viable Strategy for Islamic Law Reform? The Case of ‘Never Shall a Folk Prosper Who Have Appointed a Woman to Rule Them,’” *Islamic Law and Society* 18, no. 2 (2011): 131–76, <https://doi.org/10.1163/156851910X537793>.

legally authorized to serve as guardians for their own minor children according to the majority of the Sunnī jurists. On the other hand, according to these same jurists, women – and not just the mother – *could* serve as the designated guardian (*waṣī*) of minor children if their father appointed her.⁹

Likewise, Quran 4:34 (*al-Nisā'*), provides that “men are the maintainers (*qawwāmūn*) of women.” *Qayyim*, a cognate of *qiwāma*, is at times used in the legal context of trust law (*fiqh al-awqāf*) to refer to a person exercising supervisory duties of one sort or the other over the trust’s property, subjecting that person to a fiduciary duty. The close association between the duty of support and maintenance (*qiwāma*) and the concept of *wilāya* has sometimes been transposed in the popular imagination to the relationship between a husband and a wife despite the fact that there is little support in the *fiqh* for the proposition that a wife – by virtue of being a woman or being married – suffers from a legal disability (*mahjūr ‘alayhā*) such that she is in need of a guardian (*walī*) to administer her affairs, be that her husband, father, male relative or a judge. When the doctrine of *qiwāma* is assimilated with the concept of *wilāya*, it seems that it is the outward resemblance between (1) the reciprocal duties of support and obedience that the law of marriage imposes on the husband-wife relationship, and (2) the reciprocal duties immanent in the relationship between a guardian and the one under his care, which is the pathway in the popular imagination through which the husband-wife relationship is reconstituted as one grounded in *wilāya*, with the husband as the guardian and the wife being placed under his control. This occurred most notoriously in the Kingdom of Saudi Arabia where women were subject to such rigorous doctrines of guardianship that human rights observers rightly described their condition as that of “perpetual minors.”¹⁰

Some topics that would be of interest to the Seminar in this regard include:

9 Fadel, “Fiduciary Principles in Classical Islamic Law Systems,” 543.

10 “Perpetual Minors: Human Rights Abuses Stemming from Male Guardianship and Sex Segregation in Saudi Arabia” (Human Rights Watch, April 19, 2008), <https://www.hrw.org/report/2008/04/19/perpetual-minors/human-rights-abuses-stemming-male-guardianship-and-sex>.

- *Why would jurists deny women the capacity to be a walī of their children, but permit them to be appointed to a functionally identical position, if it was the father who so appointed them? What does this say about conceptions of capacity and family belonging in precolonial Muslim jurisprudential thought?*
- *Although the husband-wife relationship is not, according to the jurists, grounded in wilāya, are the ethical principles that inform the duties of a guardian in other contexts relevant to understanding the content of the obedience that a wife owes her husband in classical Islamic law? Is the concept of ‘iṣma related to the ethical duties of wilāya and if so, does that tell us something important about the nature of the “property” involved when jurists speak of milk al-nikāḥ?¹¹*

5. Guidelines for Papers

Given the breadth of the concept of *wilāya* in Islamic civilization, we expect papers to cover a broad range of topics, although we expect the legal and the political dimensions of *wilāya* to be reflected prominently in many of the papers. Authors should not be deterred from participating because this is not a field of their current specialization. Indeed, one of the purposes of this Seminar is to catalyze research on the normative and practical dimensions of this concept and establish an interdisciplinary forum to further our understanding of the various roles this concept played in normative Muslim practices.

Prospective participants are kindly requested to submit the following:

(a) **A short abstract** (300-500 words), that outlines the key contribution the proposal will make, its sources, and its method, in the light of this Background Paper, and

¹¹ An interesting comparative perspective could be provided by taking into account Kant’s views of marriage, which have been widely criticized, but bear some resemblance to Muslim conceptions of the marriage contract. See, for example, Allan Beever, “Kant on the Law of Marriage,” *Kantian Review* 18, no. 3 (November 2013): 339–62, <https://doi.org/10.1017/S1369415413000149>.

(b) **A brief biography** (max. 500 words) that includes the academic background of the author, his or her academic publications, and his or her research interests.

Authors whose abstracts are selected to participate in the Seminar will be asked to submit the full paper (7,000 to max. 10,000 words).

Languages

Submissions (abstracts, bios and full papers) can be written in **English or Arabic**. Simultaneous translation will be available throughout the conference.

Peer-reviewed publication with Brill

After the conference, the full proceedings will undergo a double-blind review process. The papers which will successfully go through this process will be published as a thematic issue in the peer-reviewed *Journal of Islamic Ethics (JIE)* or an edited volume in the book-series *Studies in Islamic Ethics*, both published by Brill.

Benefits

CILE will offer the authors of accepted papers the following:

- Peer-reviewed publication
- Covering the costs of making the publication available via open access.
- Travel and accommodation costs during the conference (if the corona virus status remain risky, the conference will be held online).

Important dates

- **25 June, 2022:** Deadline for submitting an abstract and short bio.
- **25 July, 2022:** Authors whose abstracts are accepted will be notified and invited to write the full papers.
- **01 December 2022:** Deadline for submitting the full papers.

- **10 January, 2023:** Authors will be notified about the acceptance (or not) of their full-text papers.
- **20-23 February, 2023:** The proceedings of the seminar will take place in Doha.

Contact us

Submissions should be sent to ayalobaidli@hbku.edu.qa.

Please note that only submissions sent to this e-mail address will be considered.

For any inquiries about this call-for-papers, please contact Dr Mohammad Fadel (mohammad.fadel@utoronto.ca).